

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

GARY RONALD SLEZAK,)	Civil Action No. 4:07-0661-RBH-TER
)	
Petitioner,)	
)	
VS.)	
)	REPORT AND RECOMMENDATION
STANLY BURTT, WARDEN OF LIEBER)	
CORRECTIONAL INSTITUTION,)	
)	
Respondent.)	

Petitioner, appearing *pro se*, filed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254¹ on March 7, 2007.

On August 29, 2007, petitioner filed a motion for default judgment asserting respondent failed to file an answer or other response within 50 days of service. Petitioner argues the response was due on July 27, 2007. (Document #30).

Respondent filed a response in opposition asserting the Court granted his motion for an extension of time to respond until September 4, 2007. Respondent contends that he in fact answered and moved for summary judgment on August 31, 2007, four days in advance of the deadline.

A review of the docket report reveals that on July 18, 2007, respondent filed a motion for extension of time to make a return or otherwise plead. Respondent's response was due to be filed on August 6, 2007, but respondent requested an extension until September 4, 2007. On July 19,

¹ This habeas corpus case was automatically referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, DSC. Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

2007, an Order was entered granting respondent's motion for extension and giving respondent until September 4, 2007, to make a return or otherwise plead. (Document #22). Respondent filed a return and memorandum along with a motion for summary judgment on August 31, 2007. (Document #31). Based on the above, respondent's return was timely.

Therefore, it is recommended that petitioner's motion for default judgment (document #30) be DENIED in that respondent responded in a timely fashion pursuant to the Order granting an extension of time.

CONCLUSION

For the reasons set forth herein, it is RECOMMENDED that the petitioner's motion for default judgment (document #30) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III

Thomas E. Rogers, III
United States Magistrate Judge

December 18, 2007
Florence, South Carolina

The parties' attention is directed to the important information on the attached notice.